

STATE OF MICHIGAN
COURT OF APPEALS

COMERICA BANK,

Plaintiff-Appellee,

v

ROBERT F. SMITH, Personal Representative of
the Estate of BARBARA MCCALISTER,
Deceased,

Defendant-Appellant.

UNPUBLISHED

April 26, 2005

No. 251520

Wayne Circuit Court

LC No. 03-327380-AS

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying his petition for superintending control. We affirm.

Defendant's petition for superintending control stems from events that followed plaintiff's enforcement of a mortgage encumbering the decedent's property. On November 1, 1999, plaintiff granted the decedent a mortgage. The terms of the mortgage provided that, in the event of a default, plaintiff had the right to cause the property to be sold at a public sale through foreclosure by advertisement. On January 9, 2001, the decedent died. On June 11, 2001, plaintiff commenced publication of a notice of a mortgage foreclosure sale of the property and, on June 26, 2002, a sheriff's sale commenced and the property was sold to plaintiff, who placed the highest bid. Plaintiff then obtained a deed conveying plaintiff all the estate, right, title and interest that the decedent had in the property. After the expiration of the applicable redemption period, plaintiff filed a complaint in the district court seeking a judgment to recover possession of the property from the estate. In his answer, defendant raised as an affirmative defense that the district court lacked subject-matter jurisdiction over the proceeding. The district court decided that the probate court did not have exclusive jurisdiction over the summary proceeding and ordered that plaintiff's action would proceed in the district court. Thereafter, the district court entered a default judgment awarding plaintiff possession of the property. Defendant did not appeal the district court's orders, but filed a petition with the circuit court for superintending control. The circuit court denied defendant's petition, finding that the rights of the estate that defendant sought to assert did not exist because the property at issue was subject to foreclosure. Defendant then brought the instant appeal.

Defendant first claims on appeal that plaintiff's action to recover possession of the property from the estate was within the exclusive jurisdiction of the probate court, making void the district court's default judgment awarding possession to plaintiff. We disagree. Both a determination whether subject-matter jurisdiction exists and a question of statutory interpretation are reviewed on appeal de novo. *In re Haque Estate*, 237 Mich App 295, 299; 602 NW2d 622 (1999).

"[P]robate courts are courts of limited jurisdiction and derive their jurisdiction and power from statutory authority." *In re Haque*, *supra* at 302-303. Therefore, "[t]he probate court can only acquire jurisdiction when jurisdiction is expressly granted to it by statute." *Sumpter v Kosinski*, 165 Mich App 784, 798; 419 NW2d 463 (1988). Our Legislature vested original jurisdiction in the circuit courts over all civil claims and remedies "except where exclusive jurisdiction is given by the constitution or by statute to some other court . . ." MCL 600.605; *Sumpter*, *supra* at 797. The Estates and Protected Individuals Code (EPIC) confers such exclusive subject-matter jurisdiction in the probate court over matters "relat[ing] to the settlement of a deceased individual's estate," including, but not limited to, proceedings involving "estate administration, settlement and distribution" and "declaration of rights involving an estate, devisee, heir or fiduciary." MCL 700.1302(a)(ii) and (iii). Because this language is clear and unambiguous, we must apply it as written, *McFarlane v McFarlane*, 223 Mich App 119, 123; 556 NW2d 297 (1997), and conclude that plaintiff's summary proceeding to recover possession of the property in the instant case did not relate to the "settlement of a deceased individual's estate," MCL 700.1302(a)(ii) and (iii).

Here, the estate's interest in the property was subject to the decedent's mortgage and to foreclosure in the event of default. See MCL 700.1104(b); MCL 700.3101. Plaintiff lawfully exercised its right to enforce the mortgage through foreclosure by advertisement, which culminated in the sale of the property at a sheriff's sale.¹ After the required redemption period, during which time the estate failed to exercise its right to redeem the property under MCL 600.3140, the title and all rights to the property vested in plaintiff and any rights or interest the estate held in and to the property were extinguished. MCL 600.3236; *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942). After title vested in plaintiff, plaintiff properly brought an action to recover possession of the property from the estate in the district court under MCL 600.5704, which specifically confers jurisdiction over summary proceedings to recover possession of premises in the district court. Because the estate no longer had title to the property at the time plaintiff brought the proceeding to recover possession, plaintiff's action could not constitute a matter relating to the settlement of the decedent's estate. MCL 700.1302(a)(ii) and (iii). Thus, we find that the probate court lacked exclusive subject-matter jurisdiction over the proceedings. The mere fact that an estate is involved in a lawsuit does not necessarily vest jurisdiction in the probate court. *Sumpter*, *supra* at 798 ("a probate court does not become a court of general jurisdiction merely because an estate is involved.") In this case,

¹ Although the rights of creditors are subject to the EPIC's restrictions and limitations, MCL 700.3101, the EPIC does not prevent the enforcement of a mortgage by a secured creditor in an appropriate proceeding. See MCL 700.3812; MCL 700.6803(3)(a); MCL 700.3104(2).

plaintiff was merely seeking to recover property it rightfully owned from the estate. The action properly proceeded in the district court.

We next address whether the circuit court properly declined to exercise superintending control in this case. We review the court's decision whether to grant a petition for superintending control for an abuse of discretion. *In re Haque, supra* at 299-300.

Superintending control is an extraordinary power which a court may only invoke when a party has no legal remedy and demonstrates that the court has failed to perform a clear legal duty. MCR 3.302; *In re Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993). "The process of seeking an order of superintending control is not an appeal but rather is an original civil action designed to order a defendant to perform a clear legal duty." *Barham v Workers Compensation Appeal Bd*, 184 Mich App 121, 127; 457 NW2d 349 (1990). Therefore, if a party has a legal remedy by way of appeal, a complaint for superintending control must be dismissed. *Barham, supra* at 127; MCR 3.302(D)(2).

We find that the circuit court did not abuse its discretion in denying the petition for superintending control in the instant case because defendant had an adequate legal remedy in the form of an appeal. *Barham, supra* at 127; MCR 3.302(D). Under MCR 2.116(J)(2)(a), defendant was entitled to seek interlocutory appeal of the district court's decision concerning jurisdiction and its order that the case proceed in the district court. Alternatively, defendant was entitled to proceed to final judgment and raise errors in an appeal taken from the district court's default judgment awarding plaintiff possession of the property, which is a final judgment giving rise to a right of appeal, *Allied Electrical Supply Co, Inc v Tenaglia*, 461 Mich 285, 288; 602 NW2d 572 (1999). MCR 2.116(J)(2)(c); MCR 4.201(N) (an aggrieved party in a proceeding to recover possession of property has an appeal of right and must file within ten days from entry of the order). The availability of an appeal of the district court's orders provided defendant with an adequate legal remedy and barred the circuit court from exercising superintending control. MCR 3.302(D). Therefore, the circuit court did not abuse its discretion in dismissing defendant's petition. *In re Haque, supra* at 299-300. Further, defendant failed to demonstrate that the district court violated a clear legal duty by taking jurisdiction over the proceeding and awarding possession of the property to plaintiff, the rightful owner, because the district court's jurisdiction over this matter was proper. *Recorder's Court Bar, supra* at 134; *Barham, supra* at 127.

Because dismissal of the petition for superintending control was proper, we decline to address defendant's remaining issues on appeal.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder